

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Vermont Electric Cooperative, Inc.

Docket No. ER04-341-000

ORDER CONDITIONALLY ACCEPTING FOR FILING OPEN ACCESS
TRANSMISSION TARIFF AND RATE SCHEDULES, SUBJECT TO
MODIFICATION

(Issued February 12, 2004)

1. In this order, the Commission conditionally accepts for filing Vermont Electric Cooperative, Inc.'s (VEC)¹ proposed Open Access Transmission Tariff (OATT) and eight rate schedules for jurisdictional services,² and makes them effective the date of the closing of the asset sale pending in Docket No. EC04-46-000. We will also require VEC to make a compliance filing. This order benefits customers because it ensures that the terms, conditions and rates for transmission service are just and reasonable.

I. Background

2. On December 24, 2003, VEC filed its proposed OATT, pursuant to Section 205 of the Federal Power Act (FPA),³ to implement certain terms and conditions of an April 15, 2003 Purchase and Sale Agreement. Under the Purchase and Sale Agreement, VEC has agreed to purchase Citizens Communications Company's (Citizens)⁴ remaining electric

¹ VEC is a consumer-owned electric distribution cooperative headquartered in Johnson, Vermont. VEC serves approximately 16,000 members in Vermont and Massachusetts.

² FERC Electric Tariff, Original Volume No. 1, Rate Schedule FERC Nos. 2 through 9.

³ 16 U.S.C. § 824d (2000).

⁴ Citizens is an investor-owned utility providing electric, gas and other services across the country.

assets in Vermont, including its lower-voltage transmission facilities.⁵ VEC will also be assigned and will assume responsibility for Citizens Vermont Electric Division's (VED) OATT and certain Citizens service agreements, each of which corresponds to a rate schedule of Citizens that is presently on file at the Commission. On December 24, 2003, in Docket No. EC04-46-000, VEC and Citizens jointly filed a separate application under Section 203 of the FPA⁶ seeking Commission approval for Citizens to sell these remaining Commission-jurisdictional facilities to VEC (Proposed Transaction).⁷

3. VEC states that the purpose of this filing is to transfer, upon the closing of the Proposed Transaction, the rate schedules and OATT to VEC as Citizens' successor in interest. VEC states that it proposes certain limited, non-substantive modifications to the agreements and OATT to reflect the transfer of the rate schedules and tariffs from Citizens to VEC. Because many of the agreements predate the issuance of Order No. 614,⁸ VEC states that it has conformed them to the Commission's current regulations governing the form of rate schedules.

4. VEC also explains that it will assume from Citizens a number of grandfathered transmission agreements with municipal entities in Vermont, including the Village of Orleans, the Village of Enosburg Falls Water & Light Department, Barton Village, Inc. and the Swanton Electric Department (collectively, the Villages), and will continue to provide transmission service under the agreements. However, VEC is negotiating with the Villages to see if mutually advantageous terms for future service can be agreed upon.

⁵ The proposed transaction is part of a series of transactions by which Citizens is selling its jurisdictional assets in Vermont and exiting the electric utility business. Previously, Citizens transferred certain higher voltage transmission assets and associated rate schedules to Vermont Electric Power Company (VELCO). The Commission approved and accepted for filing Citizens' FPA Section 203 and 205 applications to implement the VELCO sale in Citizens Communications Company, 105 FERC ¶ 62,028 (2003) and Citizens Communications Company, Docket No. ER03-1235-000 (unpublished letter order dated October 8, 2003).

⁶ 16 U.S.C. § 824b (2000).

⁷ On December 24, 2003, in Docket No. EC04-45-000, Citizens, Great Bay Hydro Corporation (Great Bay) and VEC filed an application under Section 203 of the FPA for Citizens to sell transmission facilities and related assets associated with certain generating facilities to Great Bay.

⁸ Designation of Electric Rate Schedule Sheets, Order No. 614, 65 Fed. Reg. 18,221, FERC Stats. & Regs. ¶ 31,096 (2000).

VEC states that if these negotiations result in new service arrangements or other transactions that require the Commission's approval, it will make any needed filings.

5. VEC requests that the Commission issue an order accepting the rate schedules and OATT with an effective date as of the closing of the Proposed Transaction. VEC anticipates that the closing will occur in the first quarter of 2004 if all regulatory approvals are obtained.

6. Finally, VEC requests waiver of the cost support information required with an initial rate filing, as set out in 18 C.F.R. § 35.12(b) (2003). With respect to Rate Schedule FERC Nos. 2 through 9, VEC requests waiver of Section 35.10 of the Commission's Regulations,⁹ requiring the filing of redline-strikeover versions that display amendments to contracts already on file with the Commission. To the extent that the Commission's Regulations have not been satisfied, VEC requests waiver of such regulations.

II. Notice of Filing and Responsive Pleadings

7. Notice of the filing was published in the Federal Register, 69 Fed. Reg. 2,348 (2004), with comments, protests, or interventions due on or before January 14, 2004. Citizens filed a timely motion to intervene. A timely motion to intervene, comments and conditional protest was jointly filed by the Villages and the Vermont Public Power Supply Authority (VPPSA). On January 27, 2004, VEC filed an answer to the Villages and VPPSA's conditional protest. The Villages and VPPSA filed to withdraw their conditional protest on January 28, 2004.

A. The Villages and VPPSA's Conditional Protest

8. The Villages and VPPSA stated in their intervention (later withdrawn) that they support prompt Commission action, including acceptance of the rate schedules filed by VEC. However, they conditionally protested VEC's filing in order to protect their interests as prospective customers of VEC. They stated that there was not enough time for the parties to resolve certain concerns before the deadline for protests.

9. Specifically, regarding Rate Schedule FERC Nos. 5 through 7,¹⁰ the Villages of Barton, Orleans and Enosburg Falls have given their consent to Citizens' assignment to VEC of the so-called "FPC-10" transmission agreements between Citizens and each of

⁹ 18 C.F.R. § 35.10 (2003).

¹⁰ These agreements are currently designated as Citizens Rate Schedule FERC Nos. 29, 31 and 32.

the Villages. However, they state that VEC's filing incorrectly suggests that transmission service to the Villages is limited to the entitlements specifically set forth in VEC's transmittal letter.¹¹ The Villages and VPPSA state that, in fact, Citizens' FPC-10 rate schedules are available for the transmission of all generation entitlements that the Villages may acquire.¹²

10. The Villages and VPPSA also point out several errors in the filing. They state that VEC's proposed Rate Schedule FERC No. 4¹³ relates to a 1989 contract, the Block Loading Facilities Transmission Agreement (BLFTA), between Citizens and six other Vermont utilities. However, they state that the number of participants dropped to four in 1993 when Citizens absorbed Franklin Electric Light Company. Additionally, the Villages and VPPSA note that Citizens erroneously filed an outdated version of Rate Schedule FERC No. 25 in Docket No. ER00-3211, when it refiled all of its rate schedules to comply with Order No. 614, and VEC's filing perpetuates the error.

11. Further, the Villages and VPPSA assert that VEC appears to be unaware that the terms of Citizens' present OATT are contested. They state that VEC's filing is essentially a substitute compliance filing in Docket No. OA96-184-001, where objections to Citizens' filing in compliance with Order No. 888¹⁴ are still pending.¹⁵ The Villages

¹¹ Villages and VPPSA Comments at 5, citing VEC's December 24, 2003 filing at 8.

¹² The Villages and VPPSA state that they believe that any misunderstandings with VEC regarding these rate schedules have been resolved.

¹³ This agreement is currently designated as Citizens Rate Schedule FERC No. 28.

¹⁴ Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs., Preambles January 1991-June 1996 ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

¹⁵ See American Electric Power Service, Corp., et al., 78 FERC ¶ 61,070 at 61,261-65 (1997). The Villages and VPPSA state that, in Allegheny Power Service, Co., et al., 90 FERC ¶ 61,224 (2000), the Commission directed a large number of utilities, including Citizens, to consult with intervenors and protesters concerning the status of disputes regarding those utilities' Order No. 888 compliance filings. In its May 1, 2000

(continued . . .)

and VPPSA state that the replacement of Citizens by VEC as the transmission provider under the OATT addresses many of the concerns raised in Docket No. OA96-184-001, but they have one remaining concern regarding a provision in Original Sheet No. 137 of the VEC OATT. They state that, because no network customer of Citizens can control the block loading¹⁶ of Citizens' system, the only way that such a customer can comply with this provision¹⁷ is to avoid scheduling any capacity or energy from the Canadian grid. They argue that this is neither "open access" nor comparable service that Citizens provides to itself. The Villages and VPPSA assert that they conditionally protest this provision; however, VEC has agreed to discuss the matter further.

12. Additionally, the Villages and VPPSA assert that VEC has not filed specific numeric rates for transmission service under Rate Schedule FERC Nos. 4 through 7 or for its OATT. However, they state that VEC has also not expressly requested that the Commission waive otherwise applicable notice requirements to allow these transmission rates to adjust automatically without prior notice to the Commission.¹⁸ Finally, the Villages and VPPSA assert that a number of the rate schedules filed by VEC contain notice provisions that must be updated, special provisions that apply only to time periods that will predate the effective date of VEC's rate schedules, and title sheets that do not correctly identify the parties providing or receiving service.

(... continued)

response, Citizens reported that certain issues raised by the Vermont Department of Public Service, the Villages, VPPSA and the Burlington Electric Department remained in dispute.

¹⁶ Block loading refers to the convention of scheduling as one "block" the retail loads belonging to VEC and its wholesale transmission customers, to allow these loads to access power delivered from either the domestic grid, consisting of the New England Power Pool, or the Canadian grid, consisting of the Hydro-Quebec system, but not from both simultaneously.

¹⁷ Section 2.4, Operational Obligation, Original Sheet No. 137, states that:

The Transmission Customer is responsible for ensuring that it has sufficient load available to receive all of the capacity and energy that the Transmission Customer has scheduled for delivery from the Canadian grid. This load shall be available on the portion of VEC's system blocked to the Canadian grid at the time of such delivery.

¹⁸ The Villages and VPPSA note that they have conferred with VEC and confirmed that no such waiver of notice is being sought by VEC. The Villages and VPPSA Comments at 7.

B. VEC's Answer and The Villages and VPPSA's Withdrawal of Conditional Protest

13. In its answer, VEC states that it has discussed the issues raised by the Villages and VPPSA in their conditional protest and believes it has now resolved those concerns. VEC asserts that it is authorized to state that the Villages and VPPSA support its answer. In sum, VEC makes four clarifications and/or commitments in its answer. First, VEC acknowledges that the capacity reservation shown for Swanton Village on Original Sheet No. 25 of VEC Rate Schedule No. 4 is erroneous, and commits not to bill Swanton Village for transmission service under this rate schedule. Second, VEC confirms that it will correct its descriptions of the scope of transmission service offered under its proposed Rate Schedule Nos. 5, 6 and 7 and will continue to provide the Villages and VPPSA with the same service under the rate schedules as they received from Citizens, as well as service from all generation sources. Third, VEC commits to offer to enter into network operating agreements with prospective FERC Electric Tariff, Original Volume No. 1 customers, which departs from the language set forth in Original Sheet No. 137 of the VEC Tariff that the Villages and VPPSA have identified as objectionable and instead incorporate alternative language set out in VEC's answer.¹⁹ Fourth, VEC commits that it is not presently seeking waivers that would allow VEC to implement "formula" transmission rate adjustments without making the filings called for by 18 C.F.R. § 35.13 (2003).

¹⁹ The alternative language that VEC and the Villages and VPPSA have agreed to be included in Section 2.4, Operational Obligation, of the Network Operating Agreement would replace the last paragraph of that section and state:

To facilitate deliveries from the Canadian grid, it is necessary that the Transmission Customer has or has arranged for sufficient load available on the portion of VEC's system that can be connected to the Canadian grid to receive all of the capacity and energy that the Transmission Customer has scheduled. Since VEC controls which loads are connected to the Canadian grid, however, the Transmission Customer's loads may or may not be connected to the portion of VEC's system blocked to the Canadian grid at the time of such scheduled delivery. During such periods when the Transmission Customer's loads are available, but are not blocked to the Canadian grid due to circumstances under VEC's control, VEC will substitute loads that will allow the Transmission Customer to receive its scheduled capacity and energy. If scheduled deliveries from the Canadian Grid must be reduced due to circumstances beyond VEC's control (e.g., there is a facilities outage, or the Canadian grid operator restricts imports), reductions in schedules will be made on a pro rata basis.

14. In the Villages and VPPSA's withdrawal of conditional protest, they state that VEC's answer addresses their original concerns and seek to withdraw their conditional protest, subject to the conditions set forth in VEC's answer.

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁰ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure²¹ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept VEC's answer because it has provided information that assisted us in our decision-making process.

B. Acceptance of Filing

17. In light of the Villages and VPPSA's withdrawal of their conditional protest, the Commission no longer considers this proceeding contested. In their notice of withdrawal, the Villages and VPPSA state that they fully support the Commission's acceptance of VEC's filing, subject to the conditions set forth in VEC's answer. Thus, the Commission will conditionally accept VEC's OATT and rate schedules for filing, subject to the conditions discussed above, and VEC making a compliance filing to implement those agreed upon resolutions, within 30 days of the date of this order.

C. Compliance with Order No. 614

18. VEC's rate schedules do not fully comply with Order No. 614 and § 35.9 of the Commission's Regulations.²² First, under Order No. 614, the rate schedules must contain only the currently effective language and the currently effective participants. For example, all references to Citizens as a participant and Citizens' addresses must be changed to reflect VEC in its role as the transmission provider. In addition, the Village of Swanton must be removed from the rate schedules, as it is no longer participating in the rate schedules. Second, it appears that some of the rate schedules are missing language that is currently in the rate schedules on file at the Commission. For example,

²⁰18 C.F.R. § 385.214 (2003).

²¹18 C.F.R. § 385.213(a)(2) (2003).

²² Order No. 614, 65 Fed. Reg. 16,227 (2003).

VEC Rate Schedule FERC No. 2 (Citizens Rate Schedule FERC No. 20) is missing the “Phases II New Hampshire Transmission, Facilities Support Agreement.”

19. Thus, within 30 days of the date of this order, VEC is directed to file revised tariff sheets reflecting the above modifications and those listed in the Appendix attached to this order, in compliance with Order No. 614. VEC’s compliance includes, but is not limited to, the items listed in the Appendix.

D. Waivers

20. We deny VEC’s request for waiver of the cost support information required by 18 C.F.R. § 35.12(b), as it applies its proposal to change the sum of Transmission Plant Accounts and the sum of applicable depreciation from amounts approved in Docket No. ER03-1235-001 to reflect its previously owned transmission assets and those assets now being purchased from Citizens. Thus, VEC is directed to file cost support information justifying the proposed changes to the sum of Transmission Plant Accounts and the sum of applicable depreciation.

The Commission orders:

(A) VEC’s proposed OATT and rates schedules are hereby conditionally accepted for filing, to be effective the date of the closing of the asset sale, and subject to the outcome in Docket No. EC04-46-000, as discussed in the body of this order.

(B) VEC is hereby directed to submit a compliance filing, as discussed in the body of this order, within thirty (30) days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

Appendix

VEC Rate Schedule FERC No. 2, Citizens Rate Schedule FERC No. 20

- Citizens is still identified as a participant in the rate schedule and its address is still listed on the rate schedule.
- Missing “Phases II New Hampshire Transmission, Facilities Support Agreement.”

VEC Rate Schedule FERC No. 3, Citizens Rate Schedule FERC No. 25

- Citizens is still identified as a participant in the rate schedule and its address is still listed on the rate schedule.

VEC Rate Schedule FERC No. 4, Citizens Rate Schedule FERC No. 28

- Citizens is still identified as a participant in the rate schedule and its address is still listed on the rate schedule.
- Village of Swanton is still identified as a participant.

VEC Rate Schedule FERC No. 5, Citizens Rate Schedule FERC No. 29

- Citizens is still identified as a participant in the rate schedule and its address is still listed on the rate schedule.
- Missing footnote 1 from Citizens Original Sheet No. 4.
- Missing Attachment A, “Determination of Refunds or Repayments.”

VEC Rate Schedule FERC No. 6, Citizens Rate Schedule FERC No. 31

- Citizens is still identified as a participant in the rate schedule and its address is still listed on the rate schedule.
- Missing Attachment A, “Determination of Refunds or Repayments.”

VEC Rate Schedule FERC No. 7, Citizens Rate Schedule FERC No. 32

- Citizens is still identified as a participant in the rate schedule and its address is still listed on the rate schedule.
- Missing Attachment A, “Determination of Refunds or Repayments.”

VEC Rate Schedule FERC No. 8, Citizens Rate Schedule FERC No. 35

- Citizens is still identified as a participant in the rate schedule and its address is still listed on the rate schedule.

VEC Rate Schedule FERC No. 9, Citizens Rate Schedule FERC No. 41

- Citizens is still identified as a participant in the rate schedule and its address is still listed on the rate schedule.